UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Carolyn Sitt, individually on behalf of herself and all others similarly situated, Plaintiff, vs. Nature's Bounty, Inc., NBTY, Inc., Defendants.	Case No. 1:15-cv-04199-MKB-SMG **JOINT STATUS REPORT**

In accordance with Magistrate Judge Gold's December 6, 2016 order directing the parties to submit a report on the status of discovery, the parties hereby report as follows:

The parties have met and conferred, and continue to meet and confer, on discovery issues in an effort to resolve any disputes without the need for Court involvement. However, given the significant and unresolved issues outlined below, the parties respectfully request that the Court set this matter for a discovery status conference at its earliest convenience.

A. Written Discovery and Document Productions

1. Defendants' Position:

To date, Plaintiff has not produced any documents in response to Defendants' Requests for Production, nor has Plaintiff provided any substantive interrogatory responses. Instead, Plaintiff has provided general objections to Defendants' discovery requests, which Defendants believe to be deficient and in violation of the Federal Rules of Civil Procedure. Given Plaintiff's allegations that Defendants' black cohosh product does not alleviate symptoms associated with menopause, Defendants' requests sought information regarding Plaintiff's menopause history. Despite repeated efforts to meet and confer, Plaintiff has refused to identify a firm date by which she will produce her documents and serve amended interrogatory responses.

Defendants previously produced certain categories of documents in response to Plaintiff's Requests for Production. During the pendency of Defendants' motion to dismiss, which was decided September 26, 2016, the parties met and conferred on the scope, including custodians and search terms, for the collection of ESI. Despite agreeing in May 2016 to propose an initial list of search terms, Plaintiff did not provide a list. Defendants provided their own list to Plaintiff on November 14, 2016, which Plaintiff agreed to on November 30, 2016. Defendants are in the process of reviewing the ESI and will produce responsive documents on a rolling basis.

2. Plaintiff's Position:

Plaintiff responded to defendants' interrogatories and requests for production of documents. Given plaintiff's view that many of the requests are impermissible (e.g. requesting highly personal and sensitive information -- including plaintiff's medical history -- that has no relevance within the context of this consumer fraud action), plaintiff asserted various objections. Plaintiff is continuing to look for any proof-of-purchase documents that would be responsive to defendants' requests.

The parties have met-and-conferred multiple times about the defendants' production. Defendants have provided no indication as to when ESI discovery, responsive to requests propounded in January 2016, will be forthcoming.

B. Depositions

1. Defendants' Position:

Defendants were scheduled to depose Plaintiff Sitt on December 8, 2016. On the evening of December 6, counsel for Plaintiff cancelled the deposition, citing an unexpected conflict but stating that Plaintiff "can be available the next week." Despite repeated efforts to meet and confer, Plaintiff has not provided any date(s) when she will be available for deposition.

Defendants disagree with Plaintiff's statement below regarding the deposition scheduling of Defendants' corporate representatives. Defendants initially provided dates for the depositions of Defendants' witnesses to occur between November 8-18, 2016, and noticed Ms. Sitt's deposition to occur November 7, 2016. During the course of an October 2016 meet and confer, the parties reset dates for the depositions of Defendants' witnesses until (1) after the parties were farther along in the collection and production of ESI since the same corporate witnesses would also be email custodians; and (2) after Plaintiff had served Rule 30(b)(6) deposition notices with topics. Defendants served an amended noticed for Ms. Sitt's deposition to occur on December 8, 2016, after first confirming her availability.

2. Plaintiff's Position:

Initially, the parties agreed to depose the four corporate witnesses disclosed by way of defendants' supplemental FRCP R. 26 Disclosures. Indeed, after many weeks of discussions, the parties committed to a firm deposition schedule. Thereafter, largely as an accommodation, plaintiff agreed to postpone the corporate witness depositions and produce plaintiff on December 8^{th}. Ms. Sitt, who has five children and is a stay-at-home mother, had to suddenly cancel due to an unexpected scheduling conflict. While we expect that Ms. Sitt will be available for a deposition in the near term, plaintiff is ready to receive defendants' ESI and begin taking the depositions of defendants' corporate witnesses.

C. Settlement

With respect to settlement discussions, the parties do not anticipate seeking the assistance of the Court's mediation program at this time but will advise the Court if their needs change.

DATED: December 14, 2016

By: /s/ Joseph Lipari

JOSEPH LIPARI
The Sultzer Law Group, P.C.
14 Wall Street, 20th Floor
New York, New York 10005
Telephone: (212) 618-1938
Facsimile: (888) 749-7747
Attorney for Plaintiff

By: /s/ Amanda Groves

AMANDA L. GROVES
(admitted *pro hac vice*)
agroves@winston.com
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166-4193
Telephone: (212) 294-6700
Facsimile: (212) 294-4700

Attorney for Defendants Nature's Bounty, Inc. and NBTY, Inc. (n/k/a The Nature's Bounty Co.)